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Sung Bac Lim

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EXAMINER

PERRIN, JOSEPH L

ART UNIT

PAPER NUMBER

1792

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DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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|------------------------------|--------------------------------------|--------------------------------------|--|
| Office Action Summary | Application No. 10/580,119 | Applicant(s) LIM, SUNG BAE | |
| | Examiner Joseph L. Perrin | Art Unit 1792 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 July 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 23 July 2009 have been fully considered but they are not persuasive. While Applicant's amendment canceling the previous claims and introducing new claims 18-33 renders the claim objections and rejection under 112 moot, Applicant's arguments are unconvincing.
2. Specifically, the Applicant recites newly introduced limitations and relies on express teachings in Milocco of structures and reference numerals, arguing that the instant claims are allowable because they differ from the express teachings of Milocco. However, the Examiner fails to subscribe to the position of Applicant. A prior art reference anticipates the subject matter of a claim when that reference discloses each and every element set forth in the claim (*In re Paulsen*, 30 F.3d 1475, 1478-79, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994) and *In re Spada*, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990)); however, the law of anticipation does not require that the reference teach what Applicant is claiming, but only that the claims "read on" something disclosed in the reference. *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984) (and overruled in part on another issue), *SRI Intel v. Matsushita Elec. Corp. Of Am.*, 775 F.2d 1107, 1118, 227 USPQ 577, 583 (Fed. Cir. 1985). Also, a reference anticipates a claim if it discloses the claimed invention such that a skilled artisan could take its teachings in combination with his own knowledge of the particular art and be in possession of the

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invention. See *In re Graves*, 69 F.3d 1147, 1152, 36 USPQ2d 1697, 1701 (Fed. Cir. 1995), cert. denied, 116 S.Ct. 1362 (1996), quoting from *In re LeGrice*, 301 F.2d 929, 936, 133 USPQ 365, 372 (CCPA 1962). In the instant case, the position is taken that the structural limitations of Milocco are clearly readable on the apparatus as claimed. Applicant argues that the new limitations render the claims “allowable” but does not specify how or why such limitations result in a patentable modification. Notwithstanding the fact that the Examiner believes that Milocco is still readable on the apparatus as claimed (as shown in the forthcoming rejection(s) over Milocco), Applicant is reminded that novelty does not equate to patentability, and that a showing of novelty and non-obviousness *may* lead to patentability. However, general allegations of patentability without explanation of how/why the claims are patentably distinguishable over the prior art of record will not result in an allowance of the claimed subject matter (see 37 CFR 1.111(b)). Since the claims are directed to new claims not yet under a prior art rejection, the maintained rejection over Milocco below will address all of the newly introduced claim limitations.

Claim Rejections - 35 USC § 102

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 18-21, 25 and 27-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Milocco. Regarding claims 18 and 27-29, Milocco discloses a dishwasher comprising a tub (3) for receiving dishes, a sump housing which is coupled

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to a bottom of the tub (casing part 18 and filter 16 defining a housing around the bottom of the tub, cumulatively readable on a "sump"), the sump housing including a heater receiving portion including heater (11), upper (6) and lower (7) nozzles for spraying dishes, a washing pump (8) including a pump case in the sump housing (readable on being in the heater receiving portion since the sump housing receives a heater) and an impeller in the pump case (not shown; considered inherent/implicit as it is common knowledge that dishwasher pumps include impelling means), and a washing motor (17) mounted on an outer bottom portion of the sump housing wherein a shaft passes through(see entire document, particularly Fig. 1 and relative associated text).

Regarding claims 19, 21 and 30, the sump housing is shown with a groove portion in which the heater is received (see Figs. 1 and 2) and a hole in the sidewall which receive the heater (see heater (11) extending through the sump housing wall in Fig. 2).

Regarding claims 20 and 25, the motor is mounted on the bottom of the tub which includes a bottom wall with curved recesses/grooves, thus forming a bottom surface across the bottom of the tub in which the motor shaft is mounted. Accordingly, recitation of Milocco is readable on the apparatus as claimed.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 22-24 and 31-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Milocco. Regarding claims 22 and 31, Milocco, *supra*, discloses the claimed invention including a plate provided at the end portion of the heater and attached to an inner surface of the sidewall which shields the heater insertion hole (not numbered, see Fig. 2 showing the plate structure). Manifestly, the heater of Milocco *necessarily must* include structure which seals the hole through which the heater coil passes in Fig. 2, otherwise the dishwasher would be incapable of holding water. Accordingly, Milocco inherently or at least implicitly discloses sealing means for sealing between the heater and the wall through which the heater passes through which is not numbered but clearly shown in Fig. 2. While Milocco discloses such structure on the inner surface of the sidewall, Milocco does not disclose a structure on both the inner surface of the sidewall and outer surface of the sidewall.

However, it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8; *In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960). Therefore, the position is taken that it would have been obvious to duplicate the inner seal/plate

structure to cover seal/shield the heater on both sides of the sidewall to achieve the predictable result of forming a water tight seal in the heater receiving hole of the sump sidewall. Absent adequate evidence or showing of unexpected results or unpredictability, the claimed configuration is considered *prima facie* obvious.

Regarding claim 23 and 32, while the use of fastening means for fastening the plates to the sidewall are clearly required, i.e. inherent, Milocco does not expressly disclose what is used to fasten the plate. However, the position is taken that the use of common knowledge fastening means such as a bolt and nut would be well within the level and skill generally available to one having ordinary skill in the art as the use of such fastening means is old and well known and not considered a patentable modification.

Regarding claims 24 and 33, Milocco discloses the heater coil with bends but does not expressly disclose the claimed three bends in a “meandering shape”. It would have been an obvious matter of engineering choice to select a heating coil shape to satisfy the dimensions of the sump housing, since such a modification would have involved a mere change in the form or shape of a component. A change in form or shape is generally recognized as being within the level of ordinary skill in the art. *In re Dailey*, 149 USPQ 47 (CCPA 1976).

8. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Milocco in view of U.S. Patent No. 5,165,433 to Meyers. Milocco, *supra*, discloses the claimed invention including a washing machine motor wherein the shaft horizontally extends

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from the motor. Milocco does not disclose the motor shaft being vertical. However, Meyers teaches that it is known to mount a washing machine motor shaft vertically extending between the motor and pump in a dishwasher sump housing (see, for instance, Fig. 3).

Thus, both motor/pump configurations are old and well known in the dishwashing art, and the substitution of one configuration for the other is *prima facie* obvious since the substitution would result in the same predictable result of providing a sump pump to a dishwasher. Moreover, it would have been obvious to one having ordinary skill in the art at the time the invention was made to rearrange the motor/pump configuration from a horizontal configuration to a vertical configuration, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

10. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph L. Perrin whose telephone number is (571)272-1305. The examiner can normally be reached on M-F 8:00-4:30.

12. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael E. Barr can be reached on (571)272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

13. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Joseph L. Perrin/
Joseph L. Perrin, Ph.D.
Primary Examiner
Art Unit 1792

JLP